

### REMARKS

The specification has been amended to claim priority to US. Patent Application Serial No. 09/360,599 (the '599 Application) and U.S. Patent No. 6,009,877 (the '877 Patent). Stuart D. Edwards is an inventor common to the instant application, the '599 Application, and the '877 Patent. A Petition for an Unintentionally Delayed Benefit Claim has been submitted, a copy of which is attached (Attachment A).

Claim 107-114 remain pending in the application. Of these, claims 107 and 111 are currently amended to more particularly state the subject matter being claimed.

Claims 107-114 are rejected under the doctrine of obviousness-type double patenting over the following patents:

1. Claims 1-88 of U.S. Patent No. 6,056,744
2. Claims 1-51 of U.S. Patent No. 6,254,598
3. Claims 1-21 of U.S. Patent No. 6,258,087
4. Claims 1-16 of U.S. Patent No. 6,402,744
5. Claims 27-52 of U.S. Patent No. 6,077,257
6. Claims 107-113 of U.S. Patent No. 6,673,070
7. Claims 1-17 of U.S. Patent No. 6,613,047
8. Claims 1-90 of U.S. Patent No. 6,749,607

Claims 107-114 are provisionally rejected under the doctrine of obviousness-type double patenting over the pending claims of the following co-pending application:

1. Application Serial No. 09/911,874 (the '874 Application)

Applicant respectfully traverses these rejections. The focus of an obviousness-type double patenting rejection as provided in MPEP §804(II)(B)(1) is whether any claim in the application defines an obvious variation of an invention claimed in the patent. The invention claimed in the instant application includes the use of mapping electrodes. None of the cited reference includes claims which teach or suggest the use of mapping electrodes. With respect to each of the above rejections, the Examiner indicates that "the use of mapping electrodes to first detect tissue is deemed an obvious consideration for one of ordinary skill in the art, particularly in view of the Edwards [U.S. 6,056,744] disclosure." U.S. 6,056,744 shares the same disclosure as the '877 Patent and the same effective filing date of February 19, 1998 as to disclosure of mapping tissue at or near a

sphincter. Therefore, Applicant's claim of priority to the '877 Patent removes the '744 Patent as prior art as to the instant application. None of the cited references teach or suggest the use of mapping electrodes at or near a sphincter prior to the instant application's effective filing date of February 19, 1998. As the Examiner has presented no prior art or combination of prior art that teaches or suggests a method in which a treatment device is operated in a first state to map electrical action potential in a tissue region at or near the sphincter and in a second state to ablate tissue at or near the sphincter, Applicant respectfully requests that these rejections be withdrawn.

Reconsideration in view of the foregoing amendments and remarks and allowance of claims 107-113 is respectfully requested.

Respectfully Submitted,

By Patricia A. Limbach  
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22 February 2005

Customer No.: 26308

09/09/924,935 CON/060222 AMENDMENT D

Enclosures:   Amendment Transmittal  
                  Attachment A  
                  Return postcard



Customer No.: 26308

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Edwards et al.

Docket No.: 9222.16785-CON

Serial No.: 09/924,935

Examiner: M. Peffley

Filed: 8 August 2001

Group Art Unit: 3739

Title: Apparatus to Detect and Treat Aberrant Myoelectric Activity

**PETITION FOR AN UNINTENTIONALLY DELAYED BENEFIT CLAIM  
PURSUANT TO 37 C.F.R. §1.78(a)(3)**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests to amend the benefit claim under 35 U.S.C. §120 of the above-noted application, as follows in marked-up form:

This application is a continuation of co-pending US. Patent Application Serial No. 09/026,085, filed February 19, 1998. This application is also a continuation-in-part of co-pending US. Patent Application Serial No. 09/360,599, filed July 26, 1999, now abandoned, which is a continuation of US. Patent Application Serial No. 09/026,296, filed February 19, 1998, now U.S. Patent No. 6,009,877.

The benefit claim, amended as proposed, has been submitted in Applicant's Amendment D (filed 22 February 2005, a copy of which is attached as Attachment A), filed in response to the Office Action mailed September 27, 2004.

Attachment A

Applicant states that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of 37 C.F.R. §1.78 and the date the claim was filed was unintentional.

Applicant hereby petitions for acceptance of the unintentionally delayed benefit claim.

The requisite fee under 37 C.F.R. §1.17(t) is submitted herewith.

Respectfully Submitted,

By Patricia A. Limbach

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Continued 16785 CON-01/90/222 Petitioner Under 37 C.F.R. 1.78(d)

Enclosures: Attachment A  
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